No. 86-337



# In the Supreme Court

OF THE

# United States

OCTOBER TERM, 1986

BURLINGTON NORTHERN RAILROAD COMPANY,
*Petitioner,*

v.

OKLAHOMA TAX COMMISSION, et al.,
*Respondents.*

**On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit**

## AMICI CURIAE BRIEF OF THE STATES OF CALIFORNIA, COLORADO, FLORIDA, IOWA, MINNESOTA, MONTANA, NEBRASKA, NEVADA, NORTH CAROLINA, OREGON, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, VIRGINIA, WASHINGTON AND WYOMING

## IN SUPPORT OF RESPONDENTS

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## QUESTION PRESENTED

Whether, in addition to covering state assessment ratio discrimination and state tax rate discrimination, section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (49 U.S.C. § 11503) also gives any jurisidiction to the federal courts to review claims of valuation discrimination regarding state determinations of market value of railroad property.

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## IN SUPPORT OF RESPONDENTS

## INTEREST OF AMICI CURIAE

The State of California on behalf of the California State Board of Equalization submits this brief as *amicus curiae* in support of respondent the Oklahoma Tax Commission. Supreme Court Rule 36.4 allows California to file this brief without obtaining the consent of the parties. The following States join California in this brief: Colorado, Florida, Iowa, Minnesota, Montana, Nebraska, Nevada, North Carolina, Oregon, South Carolina, South Dakota, Tennessee, Virginia, Washington and Wyoming.

The California State Board of Equalizaiton is a defendant in a number of consolidated actions now pending in which the plaintiffs—all the major railroads and railroad car companies operating in California, including petitioner Burlington Northern in this appeal—seek relief under Section 306 of the 4-R Act.[1] An interlocutory appeal in that litigation resulted in *Atchison, Topeka & Santa Fe Ry v. Board of Equalization*, 795 F.2d 1442 (9th Cir. 1986), in which the Ninth Circuit held that section 306 does encompass valuation claims.[2] The Ninth Circuit's decision directly conflicts with the decision of the Tenth Circuit below.

As a general matter, California and the other amici states are concerned that an overly broad interpretation of section 306 will lead to the excessive intrusion of the federal courts into the internal tax affairs of the states.

## SUMMARY OF ARGUMENT

There are several stages to the determination of a property tax liability. First, valuation procedures are used to reach an appraisal of the market value of the property. Second, an assessment ratio often is applied to the market value, resulting in an assessed value which is a percentage of the market value. Finally, a tax rate is applied to the assessed value to reach the actual amount of property taxes attributable to that property.

Section 306 was enacted in part to provide equalization relief from *assessment ratio* discrimination, sometimes termed *equalization* discrimination—the practice of certain states of setting the

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[1] The Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210, codified as 49 U.S.C. § 11503. The differences between section 306 and its codified version are recognized to be of no significance. *Trailer Train v. State Bd. of Equalization*, 697 F.2d 860, 862 n.1 (9th Cir. 1982), *cert. denied*, 464 U.S. 846 (1983). The text of section 306 is attached as an appendix to this brief.

[2] The Ninth Circuit also held that the District Court should abstain from plaintiffs' valuation claims pending the outcome of tax refund actions which plaintiffs had brought in the state courts. A petition for rehearing is pending in *Santa Fe*.



assessed value of rail transportation property by using a higher percentage of market value than the assessment percentage which is applied to other property. For example, under state law railroad property might be assessed at 50% of market value while other property is assessed at 40% of market value. No one disputes that section 306 was intended to give the federal courts jurisdiction over claims of assessment ratio discrimination.

Similarly, there is no dispute that section 306 also was enacted to provide relief from *tax rate* discrimination, wherein a state might subject the assessed value of railroad property to a higher tax rate than is applied to the assessed values of other property.

Issues of *valuation* discrimination, on the other hand, have nothing to do with assessment ratic discrimination or tax rate discrimination; in contrast, valuation discrimination would result from appraisals which exceed market value. Railroad property typically is appraised by such methods as the income capitalization method and the cost method. Claims of valuation discrimination therefore involve such matters as the prediction of future income and the treatment of track maintenance expenses.

There is a long tradition of federal noninterference in the internal tax affairs of the states. If Congress had intended to depart from this tradition by empowering the federal courts to act as appraisal appeal panels over valuation decisions of state taxing agencies, one would expect to find some evidence in the legislative history that Congress believed the railroads to be the victims of valuation discrimination. Similarly, if Congress expected the federal courts to create a federal common law of appraisal standards, one would expect to find some discussion of what form that body of law should take. But there is no mention of either topic in the history, which instead establishes that:

— Not once in the fifteen years of deliberation did Congress criticize state valuation procedures;

— Representatives of the railroad industry repeatedly told Congress that they had no complaints over the way the states valued their property;

— These representatives also told Congress that the proposed legislation would not apply to valuation disputes;

— While Congress concluded that assessment discrimination cost the railroad industry millions of dollars a year in excess tax, not one penny of excess tax was attributed to valuation discrimination;

— Congress was concerned about the intrusive effect of the legislation into the internal affairs of the states;

— Congress never expected the federal courts to create a federal common law of appraisal standards.

Nor does the language of section 306 support a broad interpretation. The language in subsections (1)(a)-(c) makes sense only in terms of relief from the assessment ratio discrimination and tax rate discrimination which Congress had in mind. Subsection (1)(d) does nothing more than expand the scope of the statute to nonproperty taxes. The burden of proof language in subsections (2)(d) and (2)(e), which the Ninth Circuit cited in *Santa Fe*, simply refers to the manner in which a claim of assessment ratio discrimination or tax rate discrimination is to be proven.

While the policy behind section 306 is to protect the railroad industry against discriminatory state taxation, that policy does not require giving the federal courts jurisdiction over valuation disputes because, as Congress recognized, the industry has adequate remedies in the state courts under state laws requiring fair market appraisals. However, the state courts cannot overturn state laws requiring assessment ratio discrimination or tax rate discrimination unless that discrimination reaches unconstitutional levels, and it is for that reason that Congress gave the federal courts jurisdiction over that type of claim.



## ARGUMENT
## I

## SECTION 306 DOES NOT ENCOMPASS CLAIMS OF DISCRIMINATORY VALUATION

### A. The Legislative History

While at first impression the language of section 306 may seem cumbersome, an examination of the legislative history shows that the language is precisely tailored to deal with the specific problem which the railroad industry asked Congress to remedy.[3] That problem was the so-called "classification systems" in many states which placed different types of property into different classifications, each classification being assessed or taxed at a different rate, and rail transportation property typically being placed in the higher classification. The Senate Committee on Commerce described the problem as follows:

> "For example, a State may assess railroad property for tax purposes at 100 percent of value, and other property at only 40 percent of such value; and, a State may subject rail property at a rate of $1 per $1,000 of assessed valuation, and other property subject to the same tax purpose at a rate of $0.50 per $1,000 of assessed valuation." (*Discriminatory State Taxation of Interstate Carriers:* S. Rep. No. 1483, 90th Cong., 2d Sess. 3 (1968).)[4]

A witness invited by the railroads told Congress that the equalization complaint they had about the states was:

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[3] The history of the bills which evolved into section 306 may be considered in interpreting section 306. *Trailer Train v. State Board of Equalization*, 697 F.2d at 865 n.6. See *supra* note 1.

[4] See also *Discriminatory State Taxation of Interstate Carriers:* S. Rep. No. 92-1085, 92d Cong., 2d Sess. 5 (1972); *State Tax Discrimination Against Interstate Carrier Property: Hearing on S. 2289 Before The Subcomm. on Surface Transportation of the Senate Comm. on Commerce:* 91st Cong., 1st Sess. 62-63 (1969); *National Transportation Policy:* S. Rep. No. 445, 87th Cong., 1st Sess. 486 (1961).

"that consistently railroads are taxed at or close to the equalization level that has been announced by the State, whereas local property is typically assessed at a considerably lower level." (*State Tax Discrimination Against Interstate Carrier Property: Hearing on S. 2289 Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce*, 91st Cong., 1st Sess. 62 (1969).)

A consistent theme in the legislative history is Congress' fear that the proposed legislation would result in federal court review of state valuation decisions. As Senator Lausche observed, assigning that role to the federal courts would "raise serious questions of policy." (S. Report No. 1483, *supra* p. 5, at 26.) Similar fears were expressed by the Interstate Commerce Commission and by representatives of the states. See *Tax Assessments on Common Carrier Property: Hearings on H.R. 736 and H.R. 10169 Before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce*, 88th Cong., 2d Sess. 2-3 (1964); *Discriminatory Taxation of Common Carriers: Hearings on S. 927 Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce*, 90th Cong., 1st Sess. 87 (1967).

Congress also expressed doubts about the constitutionality of the proposed legislation in view of decisions of this Court, including *Moses Lake Homes v. Grant County*, 365 U.S. 744 (1961), holding that the federal courts may not assess or levy state taxes. See S. Report No. 1483, *supra* p. 5, at 11-12; *Discriminatory State Taxation of Interstate Carriers:* S. Report No. 91-630, 91st Cong., 1st Sess, 12-13 (1969).[5]

Perhaps recognizing that the passage of the legislation was threatened by these concerns, representatives of the railroad industry repeatedly assured Congress that the bill would only provide equalization relief and would not reach to valuation disputes. Philip Lanier, the vice-president of the Louisville &

[5] In fact the Senate Committee on Commerce concluded that the legislation would not be invalid under *Moses Lake* because "S. 927 does not require or direct that the Federal judge perform the tax assessment or tax-levying function." S. Report No. 1483, *supra* p. 5, at 12.



Nashville Railroad Co., and chairman of the Association of American Railroads committee that prepared its congressional presentation, testified:

"On the valuation—this bill would not deal with valuation being standard. The standards and methods of valuation that any State wishes to use would be totally unaffected by this legislation."

". . . .

". . . [I]t is only in the area of equalization of the computed value that this legislation speaks." (*Common and Contract Carrier State Property Tax Discrimination: Hearing on H.R. 16245, H.R. 16251, H.R. 16316, H.R. 16357, H.R. 16411 and H.R. 16639, and S. 2289 Before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce*, 91st Cong., 2d Sess. 9, 138-139 (1970).)

His testimony was echoed by another representative of that organization, James N. Ogden:

"The principal problem in the matter of railroad assessments is not one of how to value a railroad. In the hundred-year history of railroad taxation, the practice of valuing railroads for tax purposes has reached a substantial degree of refinement." (*Hearings on H.R. 736 and H.R. 10169, supra*, p. 18.)[6]

In his written testimony Mr. Ogden removed any doubt about the scope of the proposed legislation:

"Let me emphasize that H.R. 736 does not suggest or require a State to change its assessment standards, assessment practices, or the assessments themselves." (*Hearings on H.R. 736 and H.R. 10169, supra* p. 6, at 52.)

[6] When asked whether the railroads had "actually experienced any difficulty in the various States on the assessment of your personal property or rolling stock," Mr. Ogden replied: "No, sir, not now . . . ." *Hearings on H.R. 736 and H.R. 10169, supra* p. 6, at 31.

There can be no doubt that Congress accepted the railroads' assurances. The Senate Committee on Commerce issued two reports describing the scope of the proposed legislation, and neither mentions valuation discrimination. (S. Rep. No. 1483, *supra* p. 5, at 3; S. Rep. 91-630, *supra* p. 6, at 3.) Instead the committee described discriminatory taxation as arising in "two ways", assessment ratio discrimination and tax rate discrimination, and "emphasize[d] that this bill would in no way alter the freedom of a State to tax its taxpayers so long as interstate carriers are accorded equal tax treatment with other taxpayers." (S. Rep. No. 1483, *supra* p. 5, at 3, 14; S. Rep. No. 91-630, *supra* p. 6, at 3, 15.)

What this Committee meant is that the federal courts would act if necessary to prevent the states from assessing railroad property with discriminatory assessment ratios or tax rates but would not take over the value appraisal functions of the states. This clear expression of congressional intent is dispositive of the question before this Court.

**B. The Errors in the Railroads' Legislative History Argument**

Perhaps the most telling defect in the railroads' position is their inability to find in the legislative history any evidence that Congress thought the states were over appraising the value of railroad property or any suggestion as to how those appraisals should be conducted. The legislation was before Congress for fifteen years, and surely there would have been at least some discussion of these topics along the way if section 306 was intended for the purposes which the railroads now have in mind.

Lacking such support, the railroads must instead rely on descriptions of the legislative history which we submit are mischaracterizations:

1. The railroads cite a Congressional committee finding to the effect that the railroad industry was "over-taxed by at least $50 million each year." (*Rail Revitalization and Regulatory Reform Act of 1975:* H.R. Rep. No. 94-725, 94th Cong. 1st Sess. 78 (1975).) However, as the text accompanying this finding makes clear, Congress attributed the loss



solely to assessment ratio or tax rate discrimination; there is no mention of valuation discrimination.

Nowhere in the legislative history is there even a suggestion that valuation discrimination cost the railroads as much as a single penny.

2. Railroads likewise cite a statement in a Senate report that railroads "are easy prey for State and local tax assessors." S. Rep. No. 91-630, *supra* p. 6, at 3. That remark appears in the first paragraph in a section of the report entitled "Background." In the fifth paragraph of the same section the authors explain that what they had in mind was assessment ratio discrimination or tax rate discrimination. *Id.* There is nothing anywhere in the report about valuation discrimination.

3. Certainly many state and local officials expressed fears that the proposed legislation would reach valuation disputes. It was precisely those fears which the railroads told Congress were groundless. *See supra* pp. 6-7. To put it another way, the railroads are now telling this Court that the fears were well-founded even though the railroads told Congress that such fears were baseless.

4. The railroads refer to an amendment proposed by the Director of Revenue of the State of Washington which would have required the federal courts to accept state-determined appraisals as final. However, in reality the amendment was nothing more than an attachment to the Director's letter to Senator Hartke, it clearly was unnecessary in view of the railroads' assurances, and there is nothing to show that Congress even considered it, let alone rejected it.

5. On page 26 (note 38) of the Brief for Petitioner, the railroads rely on an off-hand remark by Broley E. Travis, a former valuation engineer of the California State Board of Equalization, who after his retirement was hired by the railroads as a consultant. At the conclusion of his prepared testimony before Congress, he answered a question by stating that the federal courts would have to determine the value as the first step in the equalization process. However, as he

himself admitted, his response was given as "an engineer, and not an attorney," and he did not purport to give the response as the official position of the railroad industry. *Hearing on S. 2289, supra* p. 5, at 59. At least one court has recognized that Mr. Travis' views were not accepted by Congress. (*Burlington N. R.R. v. Lennen*, 573 F.Supp. 1155, 1163 (D. Kan. 1982), *aff'd.*, 715 F.2d 494 (10th Cir. 1983), *cert. denied*, 467 U.S. 1230 (1984).)

## II
## THE PLAIN LANGUAGE OF SECTION 306 DOES NOT REACH VALUATION DISPUTES

Even the railroads must admit that, if Congress had intended the federal courts to sit in review of state tax agencies to develop a federal common law of appraisal, it could have done so easily by including in the statute a simple phrase such as:

> "It is prohibited to appraise railroad property at more than market value."

In fact there is no such language in section 306 or anything resembling it. The railroads are therefore forced to ask this Court to make inferences from phrases in section 306 which clearly are intended to deal with other matters.

1. The railroads first rely on subsection (1)(d), which prohibits:

> "The imposition of any other tax which results in discriminatory treatment of a common carrier by railroad subject to this part."

This language must be understood in the context of the first three parts of subsection (1), which clearly refer to *property* tax discrimination. Subsection (1)(d) therefore does nothing more than expand the scope of the statute to nonproperty taxes. *See Alabama Great S. R.R. Co. v. Eagerton*, 663 F.2d 1036 (11th Cir. 1981) (excise taxes); *Ogilvie v. State Bd. of Equalization, Etc.*, 492 F.Supp. 446 (N.D. 1980), *aff'd.*, 657 F.2d 204 (8th Cir. 1981), *cert. denied*, 454 U.S. 1086 (1981) (personal property tax).



Subsection (1)(d) was a last minute addition to the bill which became section 306, and, given the absence of any discussion in the legislative history of its significance, this Court should not conclude that it was intended to be a complete turn-about of what Congress and the railroads previously said the rest of the bill meant.

2. The railroads also rely on the following language in subsection (2)(d):

> "[T]he burden of proof with respect to the determination of assessed value and true market value shall be that declared by applicable State law. . . ."

This language must be read in the context of (1)(a), which sets forth the elements of an assessment ratio discrimination claim. These elements consist of proof of the assessed value and the appraised value of both railroad property and nonrailroad property. Subsection (2)(d) simply places the burden of proving those elements on the party, normally the railroad, which would have that burden under state law.[7] It is a *non sequitur* to conclude that, because Congress intended to adopt state law on the burden of proof of proving an assessment ratio discrimination claim, Congress also intended to allow the railroads to raise claims of valuation discrimination even though they told Congress that such discrimination did not exist. Subsection (2)(d) is too slender a reed to support that conclusion.

## III
## THE STATE COURTS OFFER AN ADEQUATE REMEDY

While the railroads argue that their only protection from valuation discrimination lies in the federal courts, the fact is that their state court remedies are entirely adequate. Using California as an example, a taxpayer may after payment of the tax file a refund action in which it may raise any challenge, either factual or legal, to the assessment. The challenges raising questions of law are entitled to a de novo hearing in the trial court. Under

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[7] Equalization of course is a recognized state law procedure.

California law a challenge to the validity of the methodology, as distinguished from a challenge to the application of the methodology, is considered to raise a legal question. Since California law requires all property to be appraised at fair market value, an appraisal which does not meet that standard is subject to correction by the state courts.

It is true that Congress heard testimony from a representative of the Association of American Railroads to the effect that some state courts on some occasions were reluctant to overturn decisions of state taxing agencies. (S. Rep. No. 1483, *supra* p. 5, at 6). However Congress did not adopt his views and in fact the Chairman of the Interstate Commerce Commission observed that a number of state courts had set aside discriminatory assessments on state law grounds (S. Rep. No. 1483, *supra* p. 5, at 6.) The railroads do not make the reckless charge that state judges are biased against the railroad industry, and it is clear that Congress did not believe that such bias existed.[8]

## IV

## BOTH THE TENTH CIRCUIT'S "INTENTIONAL DISCRIMINATION" TEST AND THE UNITED STATES' "SYSTEMATIC OVERVALUATION" TEST ARE ERRONEOUS; HOWEVER, THE TENTH CIRCUIT'S TEST IS PREFERABLE TO THAT OF THE UNITED STATES

As shown above, section 306 of the 4-R Act does not give any jurisdiction to the federal courts to review or decide any valuation discrimination claims. Thus this Court should not adopt the Tenth Circuit's ruling that an exception providing for federal jurisdiction exists if the taxpayer can establish "a strong prima facie case of retaliation or intentional discrimination." (*Burlington N. R.R. v. Lennen*, 715 F.2d at 498.) This gloss on the language of section 306 has no support in legislative history and,

[8] In contrast assessment ratio discrimination and tax rate discrimination are results of classification systems which are embedded in state law and therefore must rise to unconstitutional levels before they can be overturned by the state courts.



as the United States has observed, it "would greatly complicate litigation and would have the ironic effect of demanding intrusive judicial probing of state decisionmaking." (First) Brief for the United States as Amicus Curiae in Support of Petitioner, at 11.

Furthermore, the exception is not necessary because, if the taxpayer is able to establish the necessary "strong prima facie case," that evidence should also be sufficient to persuade a state court that a violation of state law had occurred. As noted above, Congress did not find that the state courts were unwilling to protect the railroads' rights under state law.[9]

Nor should this court adopt the distinction suggested by *amicus* the United States between cases involving "systematic overvaluations" which according to the United States would have a federal forum and other cases invoving mere "errors" which would be left to the state courts. *Amicus* United States does not define the differences between the two concepts, and the problem with the argument is that, while perhaps theoretically appealing from the perspective of a law library, it fails to make any sense in the context of the real world of property valuation.

The point is illustrated by considering a hypothetical case of the appraisal of a railroad by the cost method. After the tax

[9] Compare the legislative history of section 306 with the legislative history of the Civil Rights Act, 42 U.S.C. § 1983, as described in *Monroe v. Pape*, 365 U.S. 167 (1961), showing Congress' belief that the enforcement by the state courts of federal civil rights was selective and discriminatory.

Nor do the federal courts have an implied equitable power to grant relief in such cases in view of the broad scope of the tax anti-injunction statute, 28 U.S.C. section 1341, which has been understood as depriving the federal courts of jurisdiction to enjoin the collection of a state tax even when the tax is alleged to be unconstitutional. *See Mandel v. Hutchinson*, 494 F.2d 364 (9th Cir. 1974). *See also Bland v. McHann*, 463 F.2d 21 (5th Cir. 1972), holding that the anti-injunction statue applies to claims of intentional tax discrimination; and *Rosewell v. LaSalle National Bank*, 450 U.S. 503 (1981), holding that the anti-injunction statute recognizes the need of the states to conduct their own affairs.

agency makes an appraisal based on the estimate that railroad cars have a useful life of thirty years, the railroad files a complaint for declaratory relief in the district court alleging that the useful life is only twenty years. According to *Amicus* United States the threshold question for jurisdictional purposes is whether the railroad has alleged a systematic overvaluation.

But how can the question be answered? On the one hand, if the State's estimate is wrong its use will clearly lead to the systematic overappraisal of every railroad to which it is applied. On the other hand, since any estimate of depreciation is based on factual assumptions about the nature of the equipment and the like, to the extent the assumptions are incorrect they could be defined as errors.[10]

This court should reject the tests of both the Tenth Circuit and the United States. However, if this Court decides that a limited federal overview of state appraisals is warranted, the Tenth Circuit's test at least has the advantage of being more easily understood and applied; furthermore, it focuses on the alleged bias in state tax officials which the railroads claim is the root of their problems. The United States' test lacks any of these advantages and, if it were adopted, we suspect that whether a given case received a hearing in the federal courts would turn on the skill of the attorney who drafted the complaint as much as on anything else.

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[10] Presumably the United States means by the term "error" something more than a simple computational mistake such as the faulty addition of a column of numbers. Not one of the plaintiffs in the approximately twenty law suits filed under section 306 against the California State Board of Equalization has claimed that the appraisal in question was the result of an error of that nature. If the United States does use the word with that meaning, then it apparently is asking this Court to reserve to the state courts jurisdiction over a type of lawsuit which does not exist.



## V

## THE UNTOWARD CONSEQUENCES OF A BROAD INTERPRETATION OF SECTION 306

A reversal of the decision below will mean that for the first time in our nation's history the federal courts will be asked to decide such matters as how to derive a capitalization rate from a railroad's stock and debt holdings, whether deferred income taxes should be treated as income and the pros and cons of the replacement cost new approach.

Furthermore, due to the operation of the collateral estoppel and res judicata doctrines, the decisions the federal courts reach on such matters with respect to any one taxpayer with respect to any one year might be argued to be binding for all other similarly situated taxpayers for all other years. The federal courts therefore might well become the final arbiters of the appraisal of railroad property for purposes of state taxation, even though it is absolutely certain that Congress never intended such a result.

Finally, this Court should be aware that the significance of this case extends beyond the railroad industry. Both the airline industry and the interstate bus industry are subject to legislation similar to section 306 (49 U.S.C. §§ 1513(d) and 11503a), and we understand that the interstate utilities are currently lobbying for the enactment of a comparable bill. If this Court decides that the railroads may use the federal courts as a forum for their appraisal disputes, the decision may be viewed as a precedent for those other industries as well.

## CONCLUSION

This Court should follow the intent of Congress by holding that section 306 does not encompass claims of valuation discrimination. Such a holding would leave the railroads free, as Congress intended, to present their appraisal disputes to the state courts, where their remedies are more than adequate.

Respectfully submitted,

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## APPENDIX

Section 306 of the
Railroad Revitalization and Regulatory Reform Act of 1976
Pub. L. No. 94-210, 90 Stat. 54 (Feb. 5, 1976)

(1) Notwithstanding the provisions of section 202(b), any action described in this subsection is declared to constitute an unreasonable and unjust discrimination against, and an undue burden on, interstate commerce. It is unlawful for a State, a political subdivision of a State, or a governmental entity or person acting on behalf of such State or subdivision to commit any of the following prohibited acts:

(a) The assessment (but only to the extent of any portion based on excessive values as hereinafter described), for purposes of a property tax levied by any taxing district, of transportation property at a value which bears a higher ratio to the true market value of such transportation property than the ratio which the assessed value of all other commercial and industrial property in the same assessment jurisdiction bears to the true market value of all such other commercial and industrial property.

(b) The levy or collection of any tax on an assessment which is unlawful under subdivision(a).

(c) The levy or collection of any ad valorem property tax on transportation property at a tax rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction.

(d) The imposition of any other tax which results in discriminatory treatment of a common carrier by railroad subject to this part.

(2) Notwithstanding any provision of section 1341 of title 28, United States Code, or of the constitution or laws of any State, the district courts of the United States shall have jurisdiction, without regard to amount in controversy or citizenship of the parties, to grant such mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be

necessary to prevent, restrain, or terminate any acts in violation of this section, except that—

(a) such jurisdiction shall not be exclusive of the jurisdiction which any Federal or State court may have in the absence of this subsection;

(b) the provisions of this section shall not become effective until 3 years after the date of enactment of this section;

(c) no relief may be granted under this section unless the ratio of assessed value to true market value, with respect to transportation property, exceeds by at least 5 per centum the ratio of assessed value to true market value, with respect to all other commercial and industrial property in the same assessment jurisdiction;

(d) the burden of proof with respect to the determination of assessed value and true market value shall be that declared by the applicable State law; and

(e) in the event that the ratio of the assessed value of all other commercial and industrial property in the assessment jurisdiction to the true market value of all such other commercial and industrial property cannot be established through the random-sampling method known as a sales assessment ratio study (conducted in accordance with statistical principles applicable to such studies) to the satisfaction of the court hearing the complaint that transportation property has been or is being assessed or taxed in contravention of the provisions of this section, then the court shall hold unlawful an assessment of such transportation property at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other property in the assessment jurisdiction in which is included such taxing district and subject to a property tax levy bears to the true market value of all such other property, and the collection of any ad valorem property tax on such transportation property at a tax rate higher than the tax rate generally applicable to taxable property in the taxing district.



(3) As used in this section, the term—

(a) "assessment" means valuation for purposes of a property tax levied by any taxing district;

(b) "assessment jurisdiction" means a geographical area, such as a State or a county, city, township, or special purpose district within such State which is a unit for purposes of determining the assessed value of property for ad valorem taxation;

(c) "commercial and industrial property" or "all other commercial and industrial property" means all property, real or personal, other than transportation property and land used primarily for agricultural purposes or primarily for the purpose of growing timber, which is devoted to a commercial or industrial use and which is subject to a property tax levy; and

(d) "transportation property" means transportation property, as defined in regulations of the Commission, which is owned or used by a common carrier by railroad subject to this part or which is owned by the National Railroad Passenger Corporation.